

**Summary of Key Changes and New Provisions  
2007 American Institute of Architects  
Owner-Contractor General Conditions (A201)  
And Owner-Architect Agreement (B101)**

**Peter J. Marino**

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.  
2500 Wachovia Capitol Center  
Raleigh, North Carolina 27601  
Telephone: (919) 821-6607  
Facsimile: (919) 821-6800

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## **Summary of Key Changes and New Provisions**

### **2007 American Institute of Architects Owner-Contractor General Conditions (A201) And Owner-Architect Agreement (B101)**

On November 5, 2007, The American Institute of Architects (“AIA”) introduced its newest editions of the AIA Construction Industry Contract Documents. The AIA family of construction contract forms has been around for well over 100 years and is still the most widely used set of form contract documents.

The AIA updates its form documents on a ten (10) year cycle, and the 2007 update includes forty (40) revised or new documents. By far, the two (2) forms with the broadest impact throughout the construction industry are the Owner-Contractor document referred to as A201 - 2007, General Conditions of the Contract for Construction, and the new Owner-Architect document B101 - 2007, Standard form of Agreement between Owner and Architect. These agreements are the ones most likely to be proposed for use or “required” by owners, developers and design professionals - and their respective lawyers. They are also the two (2) agreements that act as the foundation of all of the other more specialized contract forms in the AIA family of form documents that many in the construction industry encounter regularly.

What follows in chart form is a summary of the key changes and new provisions in the newly released 2007 editions of A201 and B101, as compared with the recently replaced corresponding 1997 AIA form documents. To best protect their legal and financial interests, it is important for construction industry professionals and their legal counsel to be familiar with the significant changes in the new 2007 AIA forms.

The purpose of this summary is to provide general information and to summarize certain selected portions of the referenced industry form contract documents. The information, summaries and conclusions stated herein may not be applicable to the reader’s particular circumstances and should not be relied upon as legal advice.

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**AIA-A201 2007 OWNER-CONTRACTOR GENERAL CONDITIONS  
SUMMARY OF KEY CHANGES AND NEW PROVISIONS**

Section No. in 2007 A201	Section No. in 1997 A201	Subject Matter of Provision	Summary of Issue or Changes
1.1.7	1.1.7	Instruments of Service	Former “Project Manual” concept replaced by Instruments of Service; this change is consistent with the trend toward digital data transmission and a paperless process.
1.1.8; 15.2.1	New	Initial decision on claims	Initial Decision Maker (IDM) identified by parties serves as neutral party to decide disputes; Architect remains as default IDM if an IDM is not identified by the parties; Architect still retains right to reject non-conforming work
1.6	New	Transmission of Digital Data	Provides that if the parties intend to transmit Instruments of Service in digital form, they shall “endeavor to establish necessary protocols governing such transmissions.” Digital transmission is not required, but is encouraged. ( <u>Note: See new AIA form licensing agreement and digital transfer agreement related to same.</u> )
2.2.1	2.2	Financial disclosures required of Owner	Contractor may no longer stop work based on unanswered request for Owner financial information; Contractor has unconditional right to reasonable evidence of Owner’s ability to pay but only “ <u>prior</u> to commencement of the work;” subsequent assurances may be sought only if: (1) Owner fails to pay per contract; (2) material change in work and contract sum; or (3) written request by Contractor upon “reasonable concern” regarding Owner’s ability to pay.
2.4.1	2.4.1	Owner’s right to carry out work upon contractor default	Deleted 2-step notice to cure procedure in favor of single 10-day notice and cure period after which Owner can immediately correct the work.
3.18	3.18	Indemnification	The prior provision limiting the indemnity obligations to the extent losses “are not covered by Project Management Liability insurance purchased by the Contractor” has been deleted to be consistent with the deletion of reference to this type of insurance coverage in the insurance section (§ 11.4.1) of the revised form.
3.9.2; 3.9.3	New	Key Personnel	New requirement on the Contractor to furnish to Owner and Architect in writing the name and qualifications of the Contractor’s proposed Superintendent; Owner and Architect get 14 days to approve superintendent selection.

Section No. in 2007 A201	Section No. in 1997 A201	Subject Matter of Provision	Summary of Issue or Changes
4.2.3	4.2.3	Architect's duty to review Contractor's work	Architect's duty to inspect work clarified. As to site visits, Architect shall keep Owner reasonably informed about the progress and quality of the work completed and report: (1) known deviations from the Contract Documents and Construction Schedule; and (2) defects and deficiencies actually <u>observed</u> in the work.
9.5.3; 9.6.4	9.4.2; 9.6.2	Owner Assurances of payment of Subcontractors	Owner may now "joint check" Subcontractors at its sole option if Architect withholds any payment application for reason of Contractor's failure to pay a Subcontractor; Owner may request from Contractor at any time proof that Contractor has paid Subcontractors, and may contact Subcontractors directly if Contractor does not provide evidence of payment in 7 days.
10.3	10.3	Hazardous Materials	Expanded Contractor responsibility: Changes in provisions make Contractor responsible for discovering a safe manner of handling and use of hazardous materials incorporated into the project; prior "sole" negligence standard applicable to Contractor is deleted.
11.1.2	New	Insurance – "Completed Operations" coverage	"Completed Operations" coverage now required in the Contractor's CGL policy for the benefit of the Owner; mandates coverage not only for claims arising during active construction, but also claims that arise after construction operations are complete (i.e., arising out of the work itself).
11.1.4	11.3.2	Insurance – Additional Insured Coverage	Reference to Project Management Protective Liability Insurance (PMPL) is deleted; "Additional Insured" concept added with Owner, Architect and Architect's Sub-consultants named as "additional insureds" on Contractor's general liability policy.
13.7	13.7	Statutes of limitation	Time limit for commencing claim now determined by state law – subject to a contractual repose limit of 10 years from substantial completion.
14.2.1; 14.2.2; 14.2.4	14.2	Termination	IDM (rather than Architect) certifies whether there is sufficient cause to terminate the Contractor for cause and the amount to be paid to Contractor, if any, upon termination for cause; Owner right to exclude the Contractor from the site upon termination for cause is also clarified; as to basis for finding of termination for cause, the term "persistently" refusing or failing to supply skilled workers or materials is changed to "repeatedly."
15.4	4.6.1	Dispute resolution – arbitration vs. litigation	"Check Box" dispute resolution procedure incorporated for the first time in AIA form contract and mandatory arbitration requirement is deleted; arbitration is now an option; [Note: if no option is specifically selected by parties in the agreement, the "default" method of dispute resolution is litigation (Note:

Section No. in 2007 A201	Section No. in 1997 A201	Subject Matter of Provision	Summary of Issue or Changes
			Beware AIA software “glitch” pre-selecting AAA arbitration)].
15.4.4	4.6.4	Joinder of Parties in arbitration	Consolidation of Architect, Owner, Contractor and Subcontractors in single arbitration now permitted if: (1) arbitration agreement permits consolidation; (2) common issues of law or fact exist; and (3) arbitration agreements contain materially similar procedural rules and methods for selecting arbitrators.
15.2.6.1; 15.2.6.2	4.4.6	Challenges to initial claims decisions	IDM (or Architect) can no longer force parties to mediate/arbitrate or waive right to it; Owner and Contractor each now have the right within 30 days after initial decision to issue demand to other to mediate/arbitrate within 60 days or initial decision of IDM as to a particular claim becomes final and binding.

**AIA – B101 – 2007 OWNER-ARCHITECT AGREEMENT  
SUMMARY OF KEY CHANGES AND NEW PROVISIONS**

Section No. in 2007 B101	Section No. in 1997 B141 or B151	Subject Matter of Provision	Summary of Issue or Changes
2.2	New	Standard of Care	Typical standard of care added to contract terms: Level of skill and care ordinarily provided by similarly situated architects.
2.5	New	Insurance	Lists the categories of insurance that the Architect will maintain, no terms governing coverage limits, duration and other issues are specified.
3.1.4	B141 2.1.4 & 2.1.5	Owner substitutions/directives	Classifies that the Architect is not responsible for directives or substitutions made by the Owner without the Architect’s knowledge/evaluation, or over its written objection.
3.1.5; 3.4.2	New	Construction Documents complying with applicable law	Section 3.4.2 contains the obligation for the Architect to design in accordance with the requirements of governmental authorities having jurisdiction over the project (including a new specific reference to utility services).
3.2.5.1; 3.2.3	New B151 2.2.3	Environmentally responsible design	Feasibility of environmentally responsible design approaches must now be part of the Architect’s preliminary discussions with the Owner, with the parties required to “reach an understanding” regarding the “Green” requirements of the project. Environmental issues are included as a “Basic Service” for typical issues such as material choices and building orientation; more detailed environmentally responsible design services (i.e., LEED certification) are denoted as “Additional Services.”
3.4.1; 3.6.4.1 & 3.6.4.2	B141 2.4.4.1; B151 2.4.1 B141 2.6.4.1; B151 2.6.11	Construction Documents and review of submittals	More detailed acknowledgement that the Contractor will be providing shop drawings and other submittals and that these documents will be reviewed by the Architect; The Architect reviews and approves the Contractors’ schedule of submittals. The Architect’s reviews of submittals will be in accordance with the schedule, or if there is no schedule, “with reasonable promptness.” The requirement that the review “cause no delay in the Work” has been deleted.
3.6.1.1	B141 2.6.1.1, 2.6.1.3; B151 2.6.2, 2.6.4	Construction phase services	The Architect’s construction phase services shall comply with B101 and A201-2007, but modifications to A201 made by the Owner and Contractor do not bind the Architect unless the B101 is amended.

Section No. in 2007 B101	Section No. in 1997 B141 or B151	Subject Matter of Provision	Summary of Issue or Changes
3.6.1.2	B141 2.6.1.1, 2.6.1.3, B151 2.6.2, 2.6.4	Architect's on-site responsibilities	Deletion of language stating that construction means, methods, techniques, sequences or procedures, and safety precautions and programs, are solely the Contractor's rights and responsibilities.
3.6.1.3	B141 2.6.1.2; B151 2.6.1	Duration of construction phase services	Construction phase services terminate on the date of the Final Certificate for Payment.
3.6.2.1	B141 2.6.2.1, 2.6.2.2	Evaluations of the work	The Architect's responsibility to "endeavor to guard" the Owner against construction defects during the cause of construction is changed to promising to report "observed" construction defects.
3.6.2.2	B141 2.6.2.5; B151 2.6.10	Rejection of work	The Architect is given the authority to reject Work, rather than merely advising the Owner to reject the Work; ( <u>Note</u> : this may be inconsistent with the Owner's right to accept defective work and take a credit as provided in section 12.3.1.)
3.6.2.5	B141 2.6.1.9; B151 2.6.17	Initial claims Arbiter	The Owner and Contractor are permitted to designate a third party, other than the Architect, to serve as the "initial decision maker" ("IDM"); Architect is the default IDM if none designated.
3.6.3.1	B141 2.6.3.1; B151 2.6.9.1	Certificates for payment	The caveat that the certification is made "to the best of the Architect's knowledge, information and belief" now also applies to the Work having progressed to the point indicated.
3.6.4.4	B141 2.6.1.5, 2.6.1.6	Requests for information	The requirement that RFI's be properly prepared, timely and seek only additional information has been deleted; however, responding to improper RFI's remains an Additional Service for additional compensation ( <u>See</u> § 4.2.2.2). The timing of the response shall be as agreed or else done with reasonable promptness.
4.1 4.2.1	B141 2.8.3 B141 1.3.3.2, 2.8.2; B151 3.4	"Additional Services" and "Optional Additional" Services	<p>New "Additional Services" include: measured drawings, building information modeling ("BIM"), confirmed construction documents, as-designed record drawings, as constructed record drawings, coordination of Owner's consultants, telecommunications/data design, security design, extensive environmentally responsible design, LEED certification, and fast-track design services.</p> <p>The Owner must now give written authorization for the following "Additional Services" to be performed:</p>

Section No. in 2007 B101	Section No. in 1997 B141 or B151	Subject Matter of Provision	Summary of Issue or Changes
			<p>extensive environmental design alternatives/LEED Certification, preparing digital data for transmission, evaluating bidder’s qualifications, assisting a third-party initial Decision Maker. None of these services are considered additional if the need for them is the Architect’s fault.</p> <p>“Optional Additional Services” are services outside the scope of work quoted for the Project and not anticipated to be needed. Appears in chart which allows parties to select or not. Optional Additional Services which are no longer listed on the form (but could be added by the parties) include: land survey services, geotechnical services, space schematic/flow diagrams, economic feasibility studies, environmental studies and reports, Owner-supplied data coordination, schedule development and monitoring, special bidding or negotiation, and construction management.</p>
4.2.2	B141 2.8.1	Additional “construction administration services”	<p>The Architect promptly notifies the Owner if he begins to provide these services, and the Owner can stop the Architect, who may then cease providing the services. Responding to improperly prepared RFI’s and providing services more than sixty days after the identified expected date of Substantial Completion are now specified as additional CA services. Preparation of alternate bid or proposal requests for the Owner has been deleted from the list.</p>
4.2.3	B141 2.8.2; B151 3.4	Limitations on construction phase services	<p>The Architect must notify the Owner if the Contractor is requiring him to perform more than the specified limits of the listed services. (<u>Note</u>: There is no specific requirement for Owner approval of the Architect’s performance of additional construction phase services.)</p>
5.2	B141 1.2.2.2; B151 4.2	Revising budget and costs	<p>The Owner may now change its budget for the project without the Architect’s approval, although it must notify the Architect.</p>
5.4	B141 2.2.1.2; B151 4.4	Surveys	<p>Surveys now must include any designated wetlands.</p>
5.5	B141 2.2.1.3; B151 4.5	Geotechnical Services	<p>Geotechnical Services may now include seismic evaluation.</p>



Section No. in 2007 B101	Section No. in 1997 B141 or B151	Subject Matter of Provision	Summary of Issue or Changes
5.6	B141 1.2.2.4; B151 4.6	Owner's Consultants	The Owner must coordinate the services of its consultants with the services of the Architect and provide the Architect a copy of its consultants' scope of services. The Architect must "demonstrate" that its other consultants' services are needed. The Owner's consultants must maintain professional liability insurance like the Architect.
5.10	B141 2.6.2.4; B151 2.6.8	Communications	The Owner may now communicate directly with subconsultants, but must notify the Architect if it affects the Architect's Services.
5.11	New	Coordination of duties	Before signing the construction contract, the Owner must coordinate its terms with those of the Architect's contract and provide the Architect a copy of the executed construction contract.
6.1	B141 1.3.1.1, 1.3.1.2, 1.3.1.3; B151 5.1.1, 5.1.2, 5.1.3	Cost of the Work	"Cost of the Work" definition is clarified to include all construction costs within the Architect's design scope; but not any Owner contingency.
6.3	B141 2.1.7.3; B151 5.2.2	Architect's cost estimate	The Architect may adjust the Owner's program to meet the budget, but there is no provision for Owner agreement. The Architect's cost estimating techniques are defined as merely conceptual.
6.6	B141 2.1.7.5; B151 5.2.4	Bids exceeding budget	If the lowest bid or proposal exceeds the budget, value engineering is a joint responsibility of the Architect and Owner. The program may be revised, and ultimate responsibility for program revision is the Owner's.
7.1	New	Copyright of plans and information	The party providing drawings or other information to the other warrants that it either owns the copyright or has permission to transmit the information. The parties agree to establish protocols for transmitting digital information (though no protocols required or specified).
7.3	B141 1.3.2.2, 1.3.2.3; B151 6.2	License to use plans	The scope of the license has been expanded to allow the documents to be used by Owner to alter or add to the project. Proper termination for cause by the Architect terminates the license.

Section No. in 2007 B101	Section No. in 1997 B141 or B151	Subject Matter of Provision	Summary of Issue or Changes
7.3.1	B141 1.3.2.2; B151 6.2	Owner's use of the plans without Architect	The Owner releases and indemnifies the Architect if it uses the plans without obtaining the Architect's permission, unless the Architect was terminated for cause.
8.1.1	B141 1.3.7.3; B151 9.3	Statute of repose	Establishes a contractual statute of repose lasting 10 years from the date of substantial completion, unless the local statute is shorter, in which case it controls. Late claims are waived.
8.2.2	B141 1.3.4.2; B151 7.1.2	Mediation	Unless agreed otherwise, non-binding mediation under American Arbitration Association ("AAA") rules in effect on the date of the Agreement is required prior to proceeding to either arbitration or litigation. Preliminary arbitrator selection and scheduling can proceed during mediation.
8.2.4	New	Arbitrations/binding dispute resolution	New "Check-box" procedure to elect arbitration or litigation (or an unspecified "other."). If no box is checked, disputes are resolved in litigation. ( <u>Note</u> : Beware of AIA software "glitch" pre-selecting arbitration.
8.3.2	B141 1.3.5.3; B151 7.2.2	Timing of Arbitration	An arbitration demand may not be filed prior to a demand for mediation; receipt of the demand for arbitration tolls applicable statute of limitations.
8.3.3.1 & 8.3.3.2; 8.3.3.3	New B141 1.3.5.4; B151 7.2.4	Consolidation of Arbitrations	Arbitrations may be consolidated with other arbitrations involving one or more of the same parties if: (1) the other arbitration agreement(s) permits consolidation; and (2) the arbitrations involve common issues of law, fact and procedure. A third party may be joined to an arbitration if (1) substantial common questions of law and fact exist; (2) equity requires a third party's presence; and (3) if the parties consent to consolidation and are bound or agree to arbitrate.
9.2	B141 1.3.8.2; B151 8.2	Compensation for suspended project	Prior requirement that a Project be suspended for more than 30 consecutive days before the Architect's compensation may be adjusted has been deleted.
9.3	B141 1.3.8.3; B151 8.3	Suspension resulting in termination	Architect may terminate the contract if the project is suspended for more than ninety cumulative (rather than consecutive) days for reasons other than the Architect's fault.
9.8	New	License to use plans upon termination	The license to use plans terminates or the Owner may pay a fee to remain able to use the plans upon an Owner termination for convenience.

Section No. in 2007 B101	Section No. in 1997 B141 or B151	Subject Matter of Provision	Summary of Issue or Changes
10.1	B141 1.3.7.1; B151 9.1	Choice of law	The applicable law is that of the place where the project is located, except the Federal Arbitration Act governs arbitration. Choice of law no longer tied to Architect's principal place of business.
10.4	B141 1.3.7.8	Certificates and consents	Architect gets 14 days advance prior notice of any consent forms for lenders; Architect need not sign those forms which expand its liability beyond the scope of the Agreement.
10.8	B141 1.2.3.4	Confidential information	Confidential information includes "business proprietary" information; prohibition against disclosure is made mutual.
11.8.1	B141 1.3.9.2; B151 10.2.1	Reimbursable Expenses	Reimbursable expenses now also include long distance services, dedicated data and communications services, teleconferences, project websites and extranets (rather than electronic communications); printing; professional photography and presentation material; professional services taxes; and site office expenses.
11.9.1	New	License fee upon termination for convenience	Owner must pay a fee (amount to be filled in) for maintaining its license to use the plans if it terminates the Architect for convenience.
11.10.3	B141 1.3.9.1	Withholding Architect's fee	Clarification of similar provisions in the 1997 edition that the owner may not withhold or claim an offset against the Architect's fee unless the Architect agrees or binding dispute resolution has been completed and the Architect "has been found liable;" "Adjudged" language from prior edition has been deleted.
13.2.2	B141 1.4.1.1, .2, .3	Documents incorporated by reference into the agreement	A Digital Data Protocol Exhibit (AIA document E201-2007) is now specifically referenced as being available to be incorporated by reference into the Agreement.